

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.62.2101,)	ON PROPOSED AMENDMENT
37.62.2103, 37.62.2105,)	AND REPEAL
37.62.2107, 37.62.2111,)	
37.62.2113, 37.62.2117,)	
37.62.2119 and 37.62.2121 and)	
the repeal of ARM 37.62.2115)	
pertaining to the)	
modification of child support)	
orders)	

TO: All Interested Persons

1. On January 11, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.62.2101 MODIFICATION OF SUPPORT ORDERS (1) The CSED ~~will~~ may conduct a review ~~and for~~ modification of a support order which it is enforcing: upon a verified written application showing one or more of the criteria for review under 40-5-272, MCA.

~~(a) at the request of the IV-D agency of another state, an obligor or obligee, and upon a verified written petition showing a material change of circumstances, as defined in ARM 37.62.2103(2), a showing that the support order is inconsistent with the Montana child support guidelines, or if the obligor is not required to get and keep health insurance for the child whenever it is available through employment or union;~~

~~(b) at 30 month intervals after establishment of the order or the most recent review in any case in which support rights are assigned under 53-2-613, MCA; or~~

~~(c) if the CSED finds on its own motion with reference to~~

~~CSED written procedures that a modification may be appropriate.~~

~~(2) The party filing an application for a review may withdraw the application prior to service of the administrative notice described in 40-5-273, MCA without triggering the prohibitions of ARM 37.62.2103(2)(a).~~

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-226, MCA

37.62.2103 AVAILABILITY OF REVIEW (1) ~~The CSED will conduct administrative reviews of support orders if 30 months have elapsed since establishment of the order or most recent review and a material change of circumstances has occurred. For purposes of 40-5-272(4)(a), MCA, a substantial change in circumstances includes, but is not limited to:~~

~~(a) an increase or decrease at least 30% in a parent's income for child support, as defined by the Montana child support guidelines, ARM 37.62.106(1);~~

~~(b) the adoption, emancipation, or death of a child in households where more than one child are the subjects of the guideline calculation, if the existing order is not a per child amount;~~

~~(c) the movement of a child from one parent's home to the home of the other parent, with the intent that the move is permanent and is:~~

~~(i) evidenced by the written consent of the other parent;~~

~~(ii) ordered by a court of competent jurisdiction; or~~

~~(iii) demonstrated to have continued for 90 days prior to the request for review and modification;~~

~~(d) the development of special needs by a child, if those needs were not considered in the original order; or~~

~~(e) evidence that the original Montana order was set without reference to the child support guidelines.~~

~~(2) The CSED will deny a request for review and will not conduct a periodic review and modification of a support order if any of the following conditions exist:~~

~~(a) less than 30 36 months have elapsed since establishment of from the date that the existing support order was entered, an administrative hearing was granted under 40-5-277, MCA, or an administrative order was issued which denied a modification because of the applicant's failure to meet one of the criteria described in 40-5-272, MCA or the most recent review and no material substantial change of circumstances has occurred.; For purposes of this rule, a significant change of circumstances includes, but is not limited to:~~

~~(i) an increase or decrease in a parent's net income of 25% or more;~~

~~(ii) one or more of the children have been adopted, attained the age of majority, become otherwise emancipated or died;~~

~~(iii) one or more of the children have moved from one parent's home to the home of the other parent. The move must be made with the intent that it be permanent and be:~~

~~(A) evidenced by the written consent of the other parent;~~

~~(B) ordered by a court of competent jurisdiction; or~~
~~(C) demonstrated to have continued for 90 days prior to the request for review and modification.~~

~~(iv) a child has developed special needs, as defined in the child support guidelines, which were not considered in the original order;~~

~~(v) social security benefits which were not considered in the original order are being paid to the children;~~

~~(vi) the order was set without reference to the guidelines; or~~

~~(vii) a parent has become a recipient of public assistance on behalf of a child;~~

(b) the CSED does not have an open IV-D case after the procedures in ARM 37.62.2107 have been completed;

(c) the state of Montana does not have or cannot obtain personal or subject matter jurisdiction over a necessary party;

(d) the address of a necessary party has not been verified;

(e) review and adjustment services are being provided by another IV-D agency;

(f) a modification or adjustment action is pending in another forum, ~~and activity has occurred within the last 6 months;~~ or

(g) the support order will terminate within ~~6~~ six months after the date the request for review is received by the CSED review and modification unit.

~~(3) For purposes of this subchapter a review is conducted by an arbitrator and is referred to in these rules as a settlement conference.~~

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

37.62.2105 RIGHT TO HEARING ON DENIAL OF REVIEW REQUEST (1) When a review is denied under ARM 37.62.2103, ~~the parents shall each have~~ parent requesting the review has the right to request a hearing on whether the review was properly denied. The request for hearing shall be made to the CSED office of the administrative law judge, and must be received within ~~30~~ 10 days after service of a notice ~~concerning denying the~~ review request ~~upon the parent requesting a hearing.~~ The hearing shall be conducted in the same manner as a hearing under ARM 37.62.2119.

(2) The hearing shall be conducted in accordance with CSED rules at ARM 37.62.901, et seq., except that the hearing is not a contested case hearing, and therefore no judicial review is available. The scope of the hearing is limited to the CSED's decision rejecting the review request, and the order of the administrative law judge is not subject to ARM 37.62.949 regarding proposed orders.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

37.62.2107 PROCEDURE FOR TERMINATING REVIEW OR MODIFICATION AFTER CLOSURE OF IV-D CASE (1) If a IV-D case is closed while a review application or ~~review request~~ modification action is pending, the CSED will mail notice to the ~~other~~ party who did not open the IV-D case and offer that party ~~offering~~ the opportunity to apply for support enforcement services.

(2) If a new IV-D referral or an application for support enforcement services is not received by the CSED within 20 calendar days of the date the notice was received by the party, the ~~review~~ modification notice will be dismissed or the review ~~request~~ application denied.

(3) If a new IV-D referral or an application for support enforcement services is received by the CSED within 20 calendar days of the date the notice was received by the party, the ~~review~~ action will continue from the point at which the IV-D case was closed.

(4) No additional or duplicate fees for performing the administrative review and modification will be charged in a case re-opened under this ~~section~~ rule.

(5) This ~~section~~ rule does not apply when closure is the result of a good cause determination by the appropriate agency under 42 CFR 433.147 or 45 CFR 232.40 through 232.49 that support enforcement may not proceed without risk of harm to the child or caretaker relative.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

37.62.2111 TIME FRAME DETERMINATIONS (1) For purposes of determining time frames in reviews and modifications conducted under this subchapter, the following provisions apply:

(a) a request for review is received when the CSED ~~review and modification unit~~ has sufficient information to determine if review is available under ARM 37.62.2103; or

(b) the CSED shall take no action on a review or modification while the procedures under ARM 37.62.2107 are being performed. The time provided for the performance of procedures under ARM 37.62.2107 shall not be counted in any determination of time frames~~7.~~

~~(c) a review is complete when the department's proposed modification is issued under ARM 37.62.2115, or upon the agreement of the parties to the proper amount of support under the child support guidelines; or~~

~~(d) a modification is complete when the hearing officer's order is entered under ARM 37.62.2119, or an order is entered by the CSED upon the agreement of the parties.~~

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

37.62.2113 REQUESTS FOR DISCOVERY (1) Requests for discovery by ~~parents~~ parties in administrative ~~review and~~ modification cases must be received in the CSED office of the administrative law judge on or before the 10th day after service

of a ~~review~~ notice of review of child support order and order to produce financial information upon the ~~parent party~~ requesting discovery. The CSED may request discovery by including a discovery order within its notice of proposed modification.

~~(2) Requests for discovery by the CSED must be received in the CSED office of the administrative law judge on or before the 10th day prior to the settlement conference.~~

~~(3) (2) Requests for discovery may be denied for untimeliness or for other good and reasonable cause.~~

(3) Except as otherwise provided in these rules or the authorizing statutes, discovery shall be conducted as provided in ARM Title 37, chapter 62, part 9.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, and 40-5-273, MCA

37.62.2117 NEGLIGIBLE CHANGE (1) If the difference between the existing total monthly support order and the proposed adjustment support obligation is less than ~~\$25.00 per month~~ 15%, the change may be considered negligible and the child support provisions of the existing support order need not be modified.

(2) Provisions in the existing order for the medical needs of the child may be modified even if the change in the child support amount is negligible. Where an existing support order does not contain a provision for the medical needs of the child, the order may be modified to include a medical support order even if the change in the child support amount is negligible.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

37.62.2119 MODIFICATION HEARING (1) A party ~~aggrieved by the determination of the CSED at the settlement conference~~ may request a hearing on the proposed modification notice of administrative review.

(2) The request for hearing must be received in the office of the administrative law judge within ~~30~~ 20 days after the notice of proposed modification administrative review is received by the party requesting a hearing.

(3) ~~The record at the modification hearing shall consist of the record of the settlement conference, and the testimony, exhibits or arguments presented at the time of the modification hearing.~~ If no party timely requests a hearing, the administrative law judge may enter an order adopting the terms and provisions proposed in the notice, including the child support amount and the imposition or modification of a medical support order.

(4) After the modification hearing, the ~~hearing officer~~ administrative law judge shall enter an order: in accordance with 40-5-277, MCA.

~~(a) adopting the findings of fact and conclusions of law and ordering modification of the support obligation in accordance with the CSED's proposed modification;~~

~~(b) changing all or any part of the CSED's findings of fact, conclusions of law, Montana child support guidelines calculations or determinations on variances from the guidelines and ordering modification of the support obligation accordingly;~~

~~(c) rejecting the CSED's findings, conclusions, calculations and variances in whole or in part, making new findings of fact and conclusions of law and ordering modification of the support obligation accordingly; or~~

~~(d) remanding the matter to the CSED with instructions for further review investigation or settlement conference.~~

(5) ~~The hearing officer's determination after a modification hearing constitutes a final agency decision subject to judicial review under Title 2, chapter 4, part 6, MCA. The order shall be effective the first day of the month following the issuance of the notice of proposed modification. If the modification result is a lowered child support obligation, all payments received during the pendency of the modification action shall be credited against the new obligation, and amounts exceeding the modified obligation shall be applied first to outstanding arrearages, fees, and fines. Any amount remaining after such credits shall be applied to future child support by reducing the amount of child support collected under the new order for no more than six months, or before the order terminates, whichever comes first. Parties may agree to an alternate schedule. No refunds shall be available from the CSED.~~

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, 40-5-272, and 40-5-273, MCA

37.62.2121 ADDITIONAL HEARING PROCEDURES (1) To the extent they are not inconsistent with the provisions of this subchapter, the overall hearing procedures set forth in subchapter 6 of this chapter are applicable to ~~settlement conferences and modification~~ administrative hearings under this subchapter.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-273, MCA

3. The rule 37.62.2115 as proposed to be repealed is on page 37-14063 of the Administrative Rules of Montana.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

4. The proposed amendments of ARM Title 37, chapter 62, subchapter 21, "Modification of Support Orders", are necessary in order to allow parents to modify their child support or medical support orders within the administrative process as directed by 40-5-271 through 40-5-277, MCA. The proposed rules describe the circumstances when a child support order can be reviewed and modified, when the review or modification can be terminated, and makes provisions for administrative hearings and

requests for discovery by parties if needed.

Montana's IV-D Child Support Program is required to provide review and modification services to case participants. The time frame allowed by the federal guidelines under 45 CFR 303.8(e) (1999) is that a review must be conducted within 180 calendar days of receiving a request for review, or locating the nonrequesting parent, whichever occurs later.

When providing review and modification services, state child support programs are deemed to be in compliance when a level of at least 75% of child support orders are reviewed and modified as appropriate within 180 days. Only once in the past five internal audits (Federal Fiscal Year 2000) has this level of proficiency been attained.

While failing to meet federal compliance standards is a serious concern, there is an important human element to consider also. The longer it takes for a review and modification to be completed, the more frustration it causes the party requesting a review. The proposed amendments of ARM Title 37, chapter 62, subchapter 21, should increase compliance with the 180 day time frame and reduce participants' frustration by reducing the time needed to complete a review and modification of support orders.

Specific proposed amendments to ARM Title 37, chapter 62 subchapter 21 are:

ARM 37.62.2101

Amendments are necessary because of amendments made to 40-5-272 and 40-5-273, MCA during the 2005 Montana Legislative Session and to remove unnecessary or redundant language.

ARM 37.62.2103

Amendments are necessary to define "substantial change in circumstances" as required by 40-5-272(4)(a), MCA. Additionally, changes are necessary to harmonize the rule with 40-5-272 and 40-5-277, MCA, and to remove unnecessary or redundant language.

ARM 37.62.2105

Amendments are necessary in order to make the rule consistent with other administrative rules, specifically ARM Title 37, chapter 62, subchapter 9 and CSED policy. Additional changes are necessary to remove unnecessary or redundant language.

ARM 37.62.2107

Amendments are necessary to make the language of the rule consistent with other administrative rules and harmonize the rule with amendments made to 40-5-272(5), MCA and CSED policy.

ARM 37.62.2111

Amendments are necessary to make the language of the rule consistent with other administrative rules and CSED policy, and remove unnecessary or redundant language, and to provide consistency with state law.

ARM 37.62.2113

Amendments are necessary in order to make the rule consistent with other administrative rules, specifically ARM Title 37, chapter 62, subchapter 9 and CSED policy. Additional changes are necessary to remove unnecessary or redundant language.

ARM 37.62.2115

The repeal of this rule is necessary as it is no longer consistent with the provisions of 40-5-272 through 40-5-277, MCA.

ARM 37.62.2117

Amendments to this rule are necessary to define "negligible change" and to allow administrative modification if the provisions of the medical support order are inconsistent with Title 40, chapter 5, part 8, MCA.

ARM 37.62.2119

Amendments to this rule are necessary to make the language of the rule consistent with other administrative rules and harmonize the rule with amendments made to 40-5-277, MCA and CSED policy. Additional changes are necessary to remove unnecessary or redundant language.

ARM 37.62.2121

Amendments are necessary in order to make the rule consistent with other administrative rules and to reflect the repeal of 40-5-276, MCA.

The proposed changes are necessary because the current rules pertaining to the administrative modification of child support orders are outdated and have procedures no longer required as reflected in amendments to 40-5-271 through 40-5-277, MCA.

Because of the changes made to the modification statutes in the last legislative session, there were no other viable alternatives to modifying subchapter 21 of ARM Title 37, chapter 62.

The number of persons affected by the changes to these rules is difficult to quantify. However, any party or parent seeking modification of their current child support order will be

positively affected. In Federal Fiscal Year 2004 the Child Support Enforcement Division received 1175 requests for review of child support orders affecting 2,350 parents and their children.

The cumulative amount for all persons of proposed increase, decrease, or new amount is not applicable to these rule changes as it is not possible to quantify it.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 19, 2006. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State November 28, 2005.